



# CHAPTER 10

## REGULATIONS AND LEGISLATION



## 10 - Regulations and Legislation




## Regulations and Legislation for Water Quality and Forestry in Virginia

### Federal Clean Water Act – Mandated Best Management Practices

As published, Section 404(f) affords an exemption for normal and established silvicultural activities in wetlands. However, landowners should be aware that even though a state may have a nonregulatory BMP program for forestry, as is true for most Southern states, the 15 BMPs below for road construction and maintenance are mandatory. These are enforceable by federal agencies and these agencies are increasingly penalizing those who fail to comply.

1. Roads and trails for forestry in U.S. waters must be minimal in number and area consistent with silvicultural operations and topographic and climate conditions.
2. All roads must be far enough from streams or water bodies (except those crossing these waterways) to minimize dredge/fill discharge in U.S. waters.
3. Road fill must be bridged, culverted or otherwise designed to prevent the restriction of expected high flows.
4. The fill must be properly stabilized and maintained during and following construction to prevent erosion.
5. Discharges of dredge/fill material into U.S. waters to construct road fill must be done so as to minimize the encroachment of trucks, tractors, bulldozers or other heavy equipment within (into) U.S. waters and wetlands that lie outside the lateral boundaries of the fill.
6. In designing, construction and maintaining roads, negative disturbance in U.S. waters must be kept to a minimum.
7. The design, construction and maintenance of the road crossing must not disrupt the movements of aquatic species living in the water body.
8. Borrow material must be taken from upland sites when feasible.
9. Discharges must not take, jeopardize, adversely modify or destroy the critical habitat of threatened or endangered species as defined under the Endangered Species Act.
10. Discharges into wetlands and into breeding, nesting and spawning areas for waterfowl must be avoided if less harmful alternatives exist.
11. Discharges must not be located in the proximity of a public water supply intake.



## 10 - Regulations and Legislation

12. Discharges must not occur in areas of concentrated shellfish production.
13. Discharges must not occur in part of the National Wild and Scenic Rivers System.
14. Discharges must not contain toxic pollutants in toxic amounts.
15. Temporary fills must be entirely removed and the area restored to its original elevation.

### Silvicultural Operations in Chesapeake Bay Preservation Areas

#### Regulatory Requirements

The Chesapeake Bay Preservation Act, § 10.1-2100 et seq. required “that all localities within Tidewater Virginia incorporate general water quality protection measures into their comprehensive plans, zoning ordinances, and subdivision programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands called Chesapeake Bay Preservation Areas.”

Subsequently, the Chesapeake Bay Preservation Area Designation and Management Regulations, 9VAC10-20 et seq., charges the DOF with the responsibility to oversee and document the installation of silvicultural best management practices. Section 9VAC10-20-120.10 states that:

*Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from [the] regulations provided that [the] silvicultural operations adhere to water quality protection procedures prescribed by the Department of Forestry in its ‘Forestry Best Management Practices Handbook for Water Quality in Virginia.’*

In other words, silvicultural operations within Chesapeake Bay Preservation Areas *must* implement *all* necessary Forestry BMPs.

- Before beginning a silvicultural operation, the landowner or harvester should contact the local government to determine if the proposed timber harvest site is within a Chesapeake Bay Preservation Area.
- Pursuant to a Memorandum of Understanding between the Department of Forestry (DOF) and the Chesapeake Bay Local Assistance Department (CBLAD), the DOF will conduct harvest inspections on all known silvicultural activities within Chesapeake Bay Preservation Areas to determine impacts on water quality.

- The DOF will notify the local government and CBLAD when it is determined that the Streamside Management Zone (SMZ) has not been maintained during the silvicultural activity, as recommended in this manual. Even if DOF determines that an SMZ violation may not pose an immediate threat to water quality, the SMZ violation is still considered a violation of the Chesapeake Bay Preservation Act and requires an enforcement action by the local government.
- Failure to properly install or maintain any of the forestry BMPs within a CBPA would automatically eliminate the silvicultural exemption status under the Regulations. For example, clear-cutting or partially clear-cutting within a SMZ would constitute an illegal clearing of vegetation in the RPA and would be subject to local CBPA enforcement procedures. Landowners are legally and financially responsible for all such violations and any penalty or corrective measures required by the enforcement action.
- Please contact the Chesapeake Bay Local Assistance Department at 1 (800) CHES-BAY for more information about the Chesapeake Bay Preservation Act and Regulations.



### Silvicultural Water Quality Law

Title 10.1 – Conservation

Chapter 11 - Forest Resources and the Department of Forestry

Article 12 – Silvicultural Activities Affecting Water Quality

This section of the Code of Virginia (§10.1-1181.1 through 10.1-1181.7) refers to the Silvicultural Water Quality Law. This law gives the State Forester legal authority to protect water quality from excessive sedimentation originating from silvicultural operations on any stream in Virginia.

This law allows the State Forester to issue Special Orders or Emergency Special Orders that will require implementation of corrective measures, and to impose civil penalties of up to \$5,000 per violation, with each day of a continuing violation being considered a separate violation. These orders and penalties involve all owners and operators involved in the silvicultural activity.

The law also requires that owners and operators notify the State Forester prior to the start of a silvicultural activity. Failure to do so will result in a civil penalty of \$250.00 for a first offense and up to \$1,000.00 for subsequent offenses within a 24-month period.

Please refer to the Code of Virginia for specific language regarding this law, or contact your local Department of Forestry field office for specific information regarding this law.





### Debris in Streams Law

#### § 62.1-194.1. Obstructing or contaminating state waters.

Except as otherwise permitted by law, it shall be unlawful for any person to dump, place or put, or cause to be dumped, placed or put into, upon the banks of or into the channels of any state waters any object or substance, noxious or otherwise, which may reasonably be expected to endanger, obstruct, impede, contaminate or substantially impair the lawful use or enjoyment of such waters and their environs by others. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county or corporation court of the city wherein any such violation occurs, whether there be a criminal conviction therefore or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to have violated this law or causing the same to be violated, when made a party defendant to such suit.

#### § 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.

It shall be unlawful for any person to throw or otherwise dispose of trash, debris, tree laps, logs, or fell timber or make or cause to be made any obstruction which exists for more than a week (excepting a lawfully constructed dam) in, under, over or across any river, creek, stream, or swamp, so as to obstruct the free passage of boats, canoes, or other floating vessels, or fish in such waters. The provisions of this section shall be enforceable by duly authorized state and local law-enforcement officials and by game wardens whose general police power under § 29.1-205 and forest wardens whose general police powers under § 10.1-1135 shall be deemed to include enforcement of the provisions of this section. Violations of this section shall be punishable as a misdemeanor under § 18.2-12; and each day for which any violation continues without removal of such obstruction, on and after the tenth day following service of process on the violator in accordance with § 19.2-75, shall constitute a separate offense punishable as a misdemeanor under § 18.2-12.

